

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF TEXAS

No. 6:24-cv-00257

**Robert Jason Biggs,**  
*Plaintiff,*

v.

**Danyale Lynn Biggs,**  
*Defendant.*

**ORDER**

Plaintiff Robert Jason Biggs, an inmate of the Gregg County Jail proceeding pro se and in forma pauperis, filed this lawsuit. The case was referred to United States Magistrate Judge John D. Love pursuant to 28 U.S.C. § 636(b).

On July 31, 2024, the magistrate judge issued a report recommending that plaintiff's lawsuit be dismissed with prejudice for failure to state a claim pursuant to 28 U.S.C. § 1915(e). Doc. 7. The magistrate judge reasoned that plaintiff sued under § 1983 but failed to name a state actor. A copy of the report was mailed to the plaintiff, who did not file objections.


When no party objects to the magistrate judge's report and recommendation, the court reviews it only for clear error. *See Douglass v. United Servs. Auto. Ass'n*, 79 F.3d 1415, 1420 (5th Cir. 1996). The court agrees with the magistrate judge that the complaint should be dismissed—but on different grounds. Although plaintiff filed his complaint on a form labeled "Prisoner's civil rights complaint," he alleges that his wife—a nongovernmental actor—engaged in tortious conduct. *See* Doc. 1 at 3 (alleging "[c]onstructive and actual fraud on fiduciary marriage over \$50,000").

Dismissing with prejudice for failure to state a claim "is a decision on the merits and essentially ends the plaintiff's lawsuit, whereas a dismissal on jurisdictional grounds alone is not on the merits and permits the plaintiff to pursue his claim in . . . another

forum.” *Hitt v. City of Pasadena*, 561 F.2d 606, 608 (5th Cir. 1977). And courts should liberally construe the filings of pro se litigants. *Collins v. Dallas Leadership Found.*, 77 F.4th 327, 330 (5th Cir. 2023).

The court therefore construes plaintiff’s complaint as attempting to assert state-law claims, not claims under § 1983. Accordingly, plaintiff’s claims are dismissed without prejudice for lack of subject-matter jurisdiction. All pending motions are denied as moot.

*So ordered by the court on November 21, 2024.*

  
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J. CAMPBELL BARKER  
United States District Judge